

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
825 North Capitol Street, NE, Suite 4150
Washington, DC 20002-4210

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY
Respondent

Case No.: I-02-12035

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985, as amended (D.C. Official Code §§ 2-1801.01 – 2-1802.05), and Title 20, Chapter 9 of the District of Columbia Municipal Regulations (“DCMR”).¹ By Notice of Infraction (No. 12035) served on June 25, 2002, the Government charged Respondent Washington Metropolitan Area Transit Authority (“WMATA”), with a violation of 20 DCMR 900.1, which prohibits, with certain exceptions, motor vehicles from idling their engines for more than three minutes while parked, stopped or standing (“the Regulation”).² The Notice of Infraction charged Respondent with violating the

¹ This matter, filed with the Department of Health’s former Office of Adjudication and Hearings, is decided by this administrative court pursuant to D.C. Official Code § 2-1831.03(a)(1).

² 20 DCMR 900.1 provides:

The engine of a gasoline or diesel powered motor vehicle on public or private space shall not idle for more than three (3) minutes while the motor vehicle is parked, stopped, or standing, including for the purpose of operating air conditioning equipment in those vehicles, except as follows:

- (a) To operate private passenger vehicles;
- (b) To operate power takeoff equipment including, dumping, cement mixers, refrigeration systems, content delivery, winches, or shredders; or

Regulation on June 6, 2002, while its bus was parked in the 800 block of Maine Avenue, S.W., and sought a fine of \$500.

On July 3, 2002, Respondent answered the Notice of Infraction in this matter with an answer and plea of Deny and a hearing was held on August 28, 2002. At the hearing, Kimberly Katzenbarger, Esq., represented the Government, and Neil Williams, the Government Inspector who issued the Notice of Infraction (the “Inspector”), testified on behalf of the Government. Mr. William A. Caldwell, Esq., Assistant General Counsel for Respondent, appeared on Respondent’s behalf, along with Sherman L. Ramey, General Superintendent for Bus Operations, and Theresa Randolph, Bus Operator, who testified on behalf of Respondent.

II. Summary of Evidence

The Inspector testified that on June 6, 2002, he drove to Maine Avenue because several citizens complained that buses were idling their engines in the Waterfront area of the city. As he approached Maine Avenue he observed a metro bus (DC License Tag 35703) (“the bus”), owned by Respondent, idling its engine. He pulled up behind the bus, took a photograph of the bus, and timed it for four minutes, from 9:57 a.m. to 10:01 a.m. The bus pulled off at 10:01 a.m. On cross examination, the inspector testified that he used three separate devices to calculate the time that an engine idles – a sprint phone, a government issued cellular phone and a stop watch. The Inspector testified that on the date of the violation he used all three devices to time the alleged violation.

Respondent’s witness, Sherman L. Ramey, testified that WMATA issued a policy directive to all bus operators notifying them of the three-minute idling rule applicable to

(c) To idle the engine for five (5) minutes to operate heating equipment when the ambient air temperature is thirty-two degrees Fahrenheit (32 [degrees] F) or below.

residential and non-residential areas. Respondent also questioned whether the Regulation clearly states the proper party to be served for engine idling violations.

Respondent's witness, Theresa Randolph, testified that she was running behind schedule and arrived at the site of the alleged violation, which is also the location where buses begin and end their route, at 9:57 a.m. She spent two or three minutes checking the bus for litter, and changing the sign on the bus. During this time the engine was idling. She testified that since she was late for the next route, she did not idle the engine for more than 3 minutes.

Respondent requests that the Notice of Infraction be dismissed because there is a factual dispute between the four minutes alleged by the Inspector and the two to three minutes alleged by the bus operator; further, the legislation which provided that vehicles with occupancy exceeding 12 passengers may idle their engine for a period exceeding three minutes, had expired without adequate notice to the public. The Government opposes Respondent's motion to dismiss. If the case is not dismissed, Respondent requests that the fine be reduced based on Respondent's proactive approach to enforcing the engine idling regulation.

For the reasons set forth herein, Respondent's motion to dismiss as a matter of law, or alternatively, for summary judgment (as the motion in reality turns on a factual dispute beyond the charging document) shall be denied. *See generally Fingerhut v. Children's Nat'l Med. Ctr.*, 738 A.2d 799, 803 (D.C. 1999) (outlining standards for deciding motions to dismiss); *Evans-Reid v. District of Columbia*, No. 00-CV-1083, 2007 D.C. App. LEXIS 399, at *15 n.11 (D.C. Jul. 12, 2007) (outlining standards for deciding motions for summary judgment).

Based upon the testimony of the witnesses, my evaluation of their credibility, and the exhibits admitted into the record, I now make the following findings of fact and conclusions of law:

III. Findings of Fact

The bus charged in this violation is owned and operated by Respondent, WMATA. On June 6, 2002, the Inspector observed the bus idling its engine on the 800 block of Maine Avenue, S.W. Within two minutes, he pulled up behind the bus, took a photograph of the bus, and timed it for four minutes, from 9:57 a.m. to 10:01 a.m. Petitioner's Exhibit ("PX") 100. The Inspector testified that on the date of the violation, he used three separate timing devices to calculate the time that the engine idled. While Respondent has presented conflicting testimony on this point from Ms. Randolph, I find it lacks the quantitative rigor of that provided by the Government. As such, I credit the Inspector's testimony that the engine was idling as he approached the vehicle, and he timed this activity for another four minutes before the vehicle drove away.

All of Respondent's employees are given a policy directive outlining the engine idling regulations. Respondent's Exhibit ("RX") 200. Based on Respondent's proactive approach to enforcing the Regulation, the Government recommends that the fine be reduced to \$350.

IV. Conclusions of Law

Respondent violated the Regulation on June 6, 2002, by allowing the engine of its bus to idle for more than three minutes while it was parked in the 800 block of Maine Avenue, S.W., as charged in the Notice of Infraction.

In addition to the conflicting evidence as to its bus's idling time -- which this administrative court has resolved herein -- Respondent argues that the case should be dismissed because the substance of the Regulation is not widely known. That argument holds no weight because the Government is only required to publish a notice of a change in its laws in the District of Columbia Register, and it is undisputed that notice was in fact published in the District of Columbia Register.³ Moreover, particularly as sophisticated business entity doing business in the District of Columbia, Respondent is expected to be on notice of applicable District of Columbia laws affecting its business, and is required to be in compliance with those laws. *DOH v. Good's Transfer, Inc.*, OAH Final Order, I-00-10436 at 3-4 (Final Order, February 1, 2001); *see also Cheek v. United States*, 498 U.S. 192, 199 (1991) (noting ignorance of law is no excuse); *Shevlin-Carpenter Co. v. State of Minnesota*, 218 U.S. 57, 68 (1910) (same). As this administrative court previously observed:

... Respondent also appears to suggest that the Government is not doing enough to make the public aware of the requirements of 20 DCMR 900.1. In the District of Columbia, the Government's public notice obligation is to publish the law or regulation in the D.C. Register in keeping with applicable comment and review periods. The text of 20 DCMR 900.1 and all recent amendments appear to have been published in the D.C. Register in accordance with those requirements. See 32 D.C. Reg. 565, 647 (February 1, 1985); 46 D.C. Reg. 6017 (July 23, 1999); 46 D.C. Reg. 8699 (October 29, 1999). While providing additional notice of a law or regulation may indeed be beneficial from a public policy standpoint, it is generally not within the purview of an administrative court to impose such an obligation on that basis.

³ The text of 20 DCMR 900.1 and all recent amendments were published in the D.C. Register in accordance with those requirements. *See* 32 D.C. Reg. 565, 647 (February 1, 1985); 46 D.C. Reg. 6017 (July 23, 1999); 46 D.C. Reg. 8699 (October 29, 1999).

DOH v. G.D. King Trucking, OAH No. I-00-11252 at 4 (Final Order, April 8, 2002) (footnote omitted). *See also DOH v. Bloch & Guggenheimer, Inc.*, OAH No. I-00-10439 at 4-5 (Final Order, April 17, 2001); District of Columbia Office of Documents Act of 1978, D.C. Official Code § 2-553; District of Columbia Administrative Procedures Act, D.C. Official Code §§ 2-501 *et seq.*

As for Respondent's suggestion that the Regulation is unclear as to the appropriate party for service of the Notice of Infraction, the Regulation expressly designates the owner or operator as the responsible party, and there is uncontroverted evidence in the record that Respondent, WMATA owns and operates the bus. *See* PX 100; RX 200. The Notice of Infraction was in fact served on WMATA.

Notwithstanding the \$500 sought by the Government, a fine of \$650 was authorized for a first offense of the Regulation.⁴ This administrative court will not impose a higher fine than that sought by the Government, however. OAH Rule 2825. The Government recommends that the fine be reduced to \$350, and that request is supported by the effort Respondent has made to inform its employees of the engine idling regulations. I will impose a fine of \$350.

V. Order

Based upon the above findings of fact and conclusions of law, it is this _____ day of _____ 2007:

⁴ The Council has classified a violation of § 900.1 as a Class 2 civil infraction, punishable by a fine of \$650 for a first offense. *See* 49 D.C. Reg. at 11596 (December 20, 2002); 16 DCMR 3224.3(aaa), as added by the Motor Vehicle Excessive Idling Fine Increase Amendment Act of 1999, D.C. Law 13-35 (Effective October 7, 1999); 46 D.C. Reg. 6017 (July 23, 1999); 46 D.C. Reg. 8699 (October 29, 1999).

ORDERED, that Respondent's motion to dismissed is **DENIED**; and it is further

ORDERED, that Respondent, shall pay a total of **THREE HUNDRED FIFTY DOLLARS (\$350)** in accordance with the attached instructions within 20 calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if the Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting 20 days after the date of mailing of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits, pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent, pursuant to D.C. Official Code § 2-1802.03(i), and the sealing of Respondent's business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7); and it is further

ORDERED, that the appeal rights of any person aggrieved by this Order are stated below.

July 19, 2007

/s/

Mark D. Poindexter
Deputy Chief
Administrative Judge